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Supreme Court of the United States

OCTOBER TERM, 1964

No. 355.

BERNARD SUSSER, *et al.*,

Petitioners,

against

CARVEL CORPORATION, *et al.*,

Respondents.

RESPONSE OF EAGLE CONE CORPORATION

Eagle Cone Corporation respectfully submits this response in opposition to the motion of Jerrold G. Van Cise, Attorney for International Franchise Association, Inc., for leave to file a brief as *Amicus Curiae.*

By letter dated February 17, 1965 the counsel for the International Franchise Association, Inc. requested Eagle Cone Corporation to consent to the filing of said *Amicus Curiae* brief. By letter dated February 19, 1965, I replied to said request and stated that our client would not consent to the filing of said brief. I stated the following:

> "The position of this office is that we are opposed to the filing of said brief on behalf of International Franchise Association, Inc. We believe that the issues involved in the case are adequately treated in the briefs filed by the parties concerned."

In the brief filed on behalf of Eagle Cone Corporation we endeavored to demonstrate that the position of Eagle Cone Corporation was simply to supply ice cream cones to

Carvel. We had no function in the franchised system as such. We were not the distributor, but merely a manufacturer who supplied Carvel, the distributor. Accordingly, we are apprehensive that the position of Eagle Cone Corporation may be jeopardized in the hearing of the main appeal if the issue is to be expanded into a broad investigation of the legality of franchise operations. The specific issues involved in the case have been briefed with care and skill by all parties immediately concerned. We believe that the legality of the Carvel-Eagle contract can be determined by settled principles of law without reference to the social and economic development of the franchise industry in the United States. Similarly, the legality of the franchise agreement between Carvel and its dealers will necessarily be judged on the basis of the applicable statutes and the decisional law. No benefit will be gained by referring to contracts or methods applicable to other industries or areas of commerce.

The Court is certainly able to take judicial notice of the wide-spread existence of franchised enterprise in our economy without having to resort to specific statistical data in respect thereof. In three recent decisions cited at page 4 of the Eagle brief, the respective courts gave their consideration to the particular legal problems within the framework of the expanding franchising development. It does not appear that the Courts were required to go into such development more minutely than by simple reference thereto as matters within the public knowledge.

So, also in the instant case, both Judge Dawson and the Court of Appeals for the Second Circuit were quite aware of the fact that franchishing is a wide-spread phenomenon in the United States and that the Carvel operation is part of such pattern. The problem now before the Supreme Court

is the legality of the Carvel operation and of its contracts with three companies who supplied Carvel. The Court will not be called upon to make any pronouncement in respect of franchising as such, or to define limits thereto.

WHEREFORE, your Eagle Cone Corporation respectfully prays that the motion for leave to file an *Amicus Curiae* brief should be denied.

Respectfully submitted,

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Dated: February 24, 1965